

**FILED**

**FEB 22 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

JOSEPH LOUIS PRUSICK,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent - Appellee.

No. 05-73796

Tax Ct. No. 10476-04L

MEMORANDUM<sup>\*</sup>

Appeal from a Decision of the  
United States Tax Court

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Joseph Louis Prusick appeals pro se from the Tax Court's summary judgment in favor of the Commissioner of Internal Revenue in his action contesting deficiencies for tax years 1999 and 2000. We have jurisdiction

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pursuant to 26 U.S.C. § 7482. We review de novo, *see Talley Indus., Inc. v. Comm'r*, 116 F.3d 382, 385 (9th Cir. 1997), and we affirm.

The Tax Court properly upheld the underlying tax liability assessed in the notice of determination because Prusick did not challenge it in his petition, and even after the Tax Court ordered him to file a supplement to his petition specifically stating any challenge to the underlying deficiency, he failed to do so. *See* Tax Ct. R. 34(b)(4); *Bob Wondries Motors, Inc. v. Comm'r*, 268 F.3d 1156, 1161 (9th Cir. 2001).

Although 26 U.S.C. § 7521(a)(1) permits recording of an in-person collection due process (“CDP”) hearing, we reject Prusick’s contention that he is entitled to a hearing so that he may record it. Prusick twice cancelled scheduled in-person CDP hearings, and then failed to call the appeals officer at the appointed time for his third scheduled CDP hearing, a telephone conference. *See* 26 U.S.C. § 6330 (describing procedures for CDP hearing).

**AFFIRMED**